

**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of CIFA North America, Inc.

Case No: DOT-21-0007

FINAL DECISION

On February 11, 2021, CIFA North America, Inc. (CIFA NA) submitted a request for hearing seeking an exemption under Wis. Stat. § 218.0121(3m)(c). Administrative Law Judge Kristin P. Fredrick was assigned to the matter and a telephonic prehearing conference was held on March 9, 2021 at which time the matter was set for hearing on March 25, 2021. Legal counsel for the Department of Transportation (Department) advised via electronic mail on March 8 and 22, 2021 that the Department did not intend to participate in the hearing and did not object to the granting of the petition. At the request of CIFA NA the hearing was adjourned to April 6, 2021. The hearing was conducted telephonically due to the Covid-19 pandemic. The record in this matter includes the digitally recorded hearing, the request for hearing, Affidavit of Matthew Dobbs and correspondence between the Department and the petitioner. The Division of Hearings and Appeals issued a Proposed Decision on April 30, 2021. No objections to the Proposed Decision were received. The Proposed Decision is hereby adopted as the Final Decision in this matter.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

CIFA North America, Inc., (CIFA NA), by

Attorney Ian A. J. Pitz
Michael Best & Friedrich, LLP
One South Pickney Street, Suite 700
P.O. Box 1806
Madison, WI 53701-1806

Wisconsin Department of Transportation (Department)

No appearance

Findings of Fact

The Administrator finds:

1. CIFA North America, Inc. (“CIFA NA”) is a Wisconsin company located at 14215 Two Mile Road, Yorkville, Wisconsin. CIFA NA is a subsidiary of CIFA S.p.A. (CIFA Italy), a foreign company located in Italy. (Hearing testimony of Matthew Dobbs; Affidavit of Matthew Dobbs, ¶ 3)

2. CIFA NA designs and manufactures equipment related to the production, transport and laying of concrete, including concrete pumps that are mounted on a truck chassis to function as a truck pump, mixer pump or truck mixer. Its customer base includes entities in the concrete pumping business. (Dobbs hearing testimony; Dobbs Aff. ¶¶ 3 and 4)
3. CIFA NA has sold only five vehicles equipped with CIFA Italy equipment since 2018 and only one of those sales occurred in the State of Wisconsin. (Dobbs hearing testimony)
4. It takes approximately 400 man-hours to complete the installation process of the concrete pumps to and the typical cost of installation of the units range between \$400,000-650,000. (Dobbs hearing testimony)
5. There is currently only one dealership in the United States that sells CIFA Italy concrete pumps, which is in Ohio. There is no dealership in operation in the State of Wisconsin. (Dobbs hearing testimony)
6. Given the insufficient customer base, limited sales, low demand for aftermarket parts or service, tight margins, and the lengthy process to sell and install CIFA Italy concrete pumps, there is no evidence that there are any prospective independent dealers in Wisconsin available to own and operate a dealership that holds and sells trucks installed with CIFA Italy concrete pumps in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of CIFA NA. (Dobbs hearing testimony; Dobbs Aff. ¶¶ 9-14)

Discussion

Under Wis. Stat. § 218.0121(2m), a manufacturer, distributor or importer of motor vehicles, or its respective agents, are not allowed to own or operate a motor vehicle dealership in the State of Wisconsin. This is commonly referred to as “the Factory Store rule”. There are four exceptions to the Factory Store rule:

(3m) This section does not prohibit any of the following:

- (a) A factory from holding an ownership interest in or operating a dealership for a temporary period, not to exceed one year, during the transition from one owner or dealer operator to another.
- (b) A factory from holding an ownership interest in a dealership, if all of the following apply:
 1. The dealer operator of the dealership is an individual who is not an agent of the factory.
 2. The dealer operator of the dealership is unable to acquire full ownership of the dealership with his or her own assets.
 3. The dealer operator of the dealership holds not less than 15 percent of the total ownership interests in the dealership within one year from the date that the factory initially acquires any ownership interest in the dealership.

4. There is a bona fide written agreement in effect between the factory and the dealer operator of the dealership under which the dealer operator will acquire all of the ownership interest in the dealership held by the factory on reasonable terms specified in the agreement.

5. The written agreement described in subd. 4. provides that the dealer operator will make reasonable progress toward acquiring all of the ownership interest in the dealership, and the dealer is making reasonable progress toward acquiring all of the ownership interest in the dealership.

6. Not more than eight years have elapsed since the factory initially acquired its ownership interest in the dealership, unless the department, upon petition by the dealer operator, determines that there is good cause to allow the dealer operator a longer period to complete his or her acquisition of all of the ownership interest in the dealership held by the factory and the longer period determined by the department has not yet elapsed.

(c) The ownership, operation or control of a dealership by a factory that does not meet the conditions under par. (a) or (b), if the division of hearings and appeals determines, after a hearing on the matter at the request of any party, that there is no prospective independent dealer available to own and operate the dealership in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the factory.

(d) The holding or acquisition, solely for investment purposes, of an ownership interest in a publicly traded corporation by an employee benefit plan that is sponsored by a factory.

Wis. Stat. § 218.0121(3m).

The petitioner in the present matter, CIFA North America, Inc. (CIFA NA), is a subsidiary of CIFA S.p.A., which is an Italian manufacturer of concrete pumps. (Dobbs hearing testimony; Dobbs Aff. ¶ 3) The concrete pumps are mounted to a truck chassis at the petitioner's Wisconsin location to be used as truck pumps, truck mixer pumps and truck mixers for use in the concrete industry. (Dobbs hearing testimony; Dobbs Aff. ¶ 3). There have only been five vehicles sold with CIFA equipment since 2018 and only such sale occurred in Wisconsin. (Dobbs hearing testimony) The installation process takes approximately 400 man-hours, and the end product can cost between \$400,000 and \$650,000 dollars. (Dobbs hearing testimony)

CIFA NA requested a hearing seeking exemption after the Department of Transportation (Department) informed CIFA NA that it would be required to hold a motor vehicle dealer's license to sell the vehicles upon which CIFA NA installs the concrete pumps. Further, because the Department considered CIFA NA a manufacturer, the Department informed CIFA NA that it could not obtain a dealer license absent an exemption under Wis. Stat. § 218.0121(3m)(c). (Dobbs hearing testimony) The Department chose not to participate in this hearing. However, per a March 8, 2021 email from the Department's Office of General Counsel, the Department advised that it believed the petitioner meets the criteria for exemption under Wis. Stat. § 218.0121(3m)(c) and thus, the Department did not object to the granting of the petition.

At the hearing CIFA NA presented testimony and evidence establishing that there is no prospective independent dealer available to own and operate a dealership in Wisconsin to sell CIFA concrete pumps or vehicles installed with CIFA concrete pumps in a manner consistent with the public interest and that meets the reasonable standards and uniformly applied qualifications of CIFA. Moreover, based upon the testimony, it would be cost prohibitive to operate an independent dealership due to the limited customer base, lengthy and costly installation process, low volume of sales and limited profit from aftermarket parts and service. Therefore, based upon the evidence, CIFA NA has satisfied its burden to establish it is entitled to an exemption of the Factory Store rule under Wis. Stat. § 218.0121(3m)(c).

Conclusions of Law

The Administrator concludes:

1. CIFA North America, Inc. has satisfied the burden of showing that no prospective independent dealers are available in Wisconsin to own and operate a dealership for the sale and service of the specialty trucks installed with CIFA Italy concrete pumps by CIFA North America in a manner consistent with the public interest and that meets the reasonable standards and uniformly applied qualifications of CIFA.
2. The Division of Hearings and Appeals has authority pursuant to Wis. Stat. § 218.0121(3m)(c) to issue the following order.

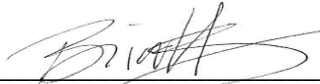
Order

The Administrator orders:

Based on the evidence in the record, no prospective independent dealers are available to own and operate a dealership for the sale and service of vehicles installed with CIFA Italy concrete pumps by CIFA North America, Inc. in Wisconsin. CIFA North America, Inc. should be allowed to own and operate a dealership in Wisconsin selling and servicing its products and vehicles and is hereby granted an exemption from the factory store rule pursuant to Wis. Stat. § 218.0121(3m)(c).

Dated at Madison, Wisconsin on May 19, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: 
Brian K. Hayes, Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.